

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 751 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

DAHYABHAI RANCHHODBHAI PATEL

Versus

THE STATE OF GUJARAT

Appearance:

MR KJ SHETHNA for Petitioner
MR YF MEHTA, APP, for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE H.L.GOKHALE

Date of decision: 06/01/97

ORAL JUDGEMENT : (Per Pandya, J.)

1. The accused appellant was tried by Sessions Case No.72 of 1987 in the Court of learned Sessions Judge of Valsad at Navsari for offence under Section 302, 201, and 498-A all of I.P.C.

2. The incident happened on 24.7.1987 during night in between 1.30 and 2 AM, at the place where the accused and his deceased wife Damayanti were residing. The charge against the accused is that, he strangulated his wife and before that, put a cloth in her mouth to gag her and due to asphyxia, she died. After doing away with her in this manner, with a view to destroy the evidence against him and also give it a colour of either accidental death or suicidal death, the dead body of Damayanti was drawn into a well situated in the open land of a neighbour. Neighbour's name turns out to be one Gangaben.

3. The learned Trial Judge by his judgment dated 30th July, 1988, was pleased to hold the accused guilty only for the offence punishable under Section 302 and awarded sentence of life imprisonment. For the remaining two offences, he has been acquitted.

4. There are certain undisputed facts. The dead body was recovered from a well and postmortem examination revealed that death preceded falling into the well and there were external marks found by the doctor indicating death due to asphyxia. Ex.28, P.W.15 is Dr. Kelkar, who in the course of his deposition proved P.M. note Ex.29, page 123 of the paper book.

5. The P.M. note clearly indicates that water was not found in lungs, stomach or air passage of the body. On the contrary, positive signs of injuries on trachea with corresponding congestion of brain, pleura and other vital organs.

6. The death of Damayanti thus being homicidal cannot be disputed. However, what is very seriously disputed and argued before us is the involvement of the accused-appellant. It transpires from the deposition of sister of the accused, Taraben, P.W.6, Ex.13, page 57 that on the fateful night, all of them took their evening meal at about 8 P.M. and by 10 P.M. had gone to sleep. The household consisted of two brothers including the accused and one more sister of the witness-Vasanti. Elder brother of the accused-Jasubhai is married and name of his wife is Veena. This couple was occupying one room. The accused and his wife-Damayanti were using the loft as their sleeping quarter and these two ladies were sleeping separately in different place in the same house. Next day morning, as usual, by 5 o' clock or so, the accused got up. Damayanti was in the habit of getting up at 4 o' clock. As she was not found early in the morning, Taraben asked the accused about Damayanti and he

replied that she might have gone to answer the call of nature. As she did not return, search was initiated and since she was not found in the village, they went to Chijgam, at a distance of about 15 to 20 kms. from the village of the accused. That inquiry was directed at that village because that is the village where the parents of the deceased-Damayanti are staying. However, the inquiry did not reveal anything. Under the circumstances, as the accused and deceased were last seen together being husband and wife, should be an ordinary state of things. He does have to explain the sudden disappearance of his wife-Damayanti. The stand taken by him before the Trial Court is, therefore, totally denied. He is, therefore, under heavy suspicion about the untimely death of his wife.

7. However, the suspicion by itself will not be enough and the prosecution has to bring home the charge against the accused beyond reasonable doubt. For this purpose, an extra judicial confession was sought to be relied upon by the prosecution through the testimony of a friend of the accused, being P.W.2, Prakashbhai Lallubhai Patel, Ex.9, page 43. He does not support the prosecution. His statement before the Police pertaining to the said alleged confession has been put to him, but he denied having ever made such a statement before the Police. So that rests at that.

8. Another piece of evidence sought to be relied on for the purpose is the so called discovery Panchnama, Ex.15, page 67, said to have been proved through the deposition of Panch witness-Naranbhai Vaghabhai Baria, P.W.7, Ex.14, page 63. In our opinion, the Panchnama has not been proved at all as one reads the examination in chief of this witness. This simply states that he had put two signatures on papers in which there was already a writing. He identifies the signature on document Mark 5/3 and on that basis, the entire Panchnama has been taken on record as Ex.15. As it has been given the colour of a discovery Panchnama, the Panchnama is in two parts.

9. As expected, the first part relates to the so called volition disclosed by the accused in presence of Panchas and the second part relates to the follow up action pursuant to the discovery thus declared to be made by the accused, of course voluntarily.

10. In our opinion, the learned Advocate, Shri Shethna, has taken objection to this Panchnama rightly on two counts. This could not be a discovery Panchnama

under Section 27 as the body was already taken from the well and the statement said to have been made by the accused is with regard to the well where he had drowned the body of the deceased, of course, after killing her. There was nothing left to be discovered and, therefore, this is not a discovery at all.

11. Even if it were so, as stated earlier, in the examination in chief the Panch witness is totally silent about any statement ever having made by the accused as to his voluntarily discovering anything or disclosing anything pertinent to the offence alleged. Later on in the examination in chief, there is also an indication that the Panchnama was being written and at the end, the Panchas have been made to sign and beyond that, he does not utter a word about the contents of the Panchnama. A proof of Panchnama would be of the substantial evidence led before the Court through the Panch witnesses because Panchnama is the record of the activity of the Panchas including all that matter that had transpired in their presence and whatever that they might have observed in their presence.

12. Once this Panchnama is taken out, except for the aforesaid suspicion, nothing can be said to be against the accused and he being under heavy suspicion, in our opinion, the ultimate result of the appeal is that the conviction will have to be set aside and benefit of doubt will have to be given to the accused. Accordingly, the appeal is allowed. The prosecution having failed to establish the charge against the accused beyond reasonable doubt, the order of conviction and sentence is set aside. Since the accused-appellant is already on bail, the bail bond stands cancelled.

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